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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5177 OF 2005

Mohammad hanif Shaikhani ... Petitioner

V/s.

Shakil Ahmed Mohd. Hanif ... Respondent

Mr.P.K. Dhakephalkar with Mr.S.U. Dhakephalkar for Petitioner
Mr.N.R. Bubna for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 4, 2005**

P.C.:

. The Petition challenges concurrent findings of fact of the Courts below. Both the Courts have held that the Petitioner is a defaulter in payment of rent.

2. An exception is taken to both the judgments of the Courts below on the ground that the notice of demand for rent which was issued on 8.12.1999 was excessive and that the notice demanded payment of rent from 1990 onwards. According to the learned Counsel appearing for the Petitioner, the respondent became the owner of the suit premises only in 1997 and, therefore, so that he could demand arrears of rent upto that period. A further submission is made that the notice of demand

mentioned that the amount due should be paid to the landlord within one month of the notice. This, according to the learned Counsel, is contrary to the provisions of the Maharashtra Rent Control Act which require the notice period to be of 90 days. It is urged next the decree should be set aside since the arrears claimed are excessive and in any event, the Petitioner had deposited amounts after filing of the standard rent application.

2. Mr.Bubna, learned Advocate appearing for the Respondent, rightly points out that the demand notice was issued on 8.12.1999. However, the suit was filed on 31.7.2000, well after 90 days. The section does not stipulate that though a notice was issued calling upon the tenant to make payment within one month it should be declared to be bad if the suit was filed after 90 days as required under the Maharashtra Rent Control Act. The notice period is stipulated in order to enable the tenant to comply with the demand or to file a standard rent application and to prevent the landlord from taking immediate action in the matter.

3. Furthermore, the suit was amended and the demand was restricted for the period from 1997 onwards and not for the period demanded in the notice i.e., from 1990.

Apart from this, the standard rent application was dismissed for default. Further, there is nothing on record to indicate that the rent was paid regularly by the tenant after filing of the suit nor is there material on record to establish that after the initial amount was deposited, any further amounts had been deposited by the tenant towards the rent. In such circumstances, I see no reason to differ from the concurrent findings of fact of both the Courts below. Petition rejected.

4. At the request of the learned Counsel for the Petitioner, the ad-interim relief granted earlier to continue for a period of eight weeks from today subject to Petitioner filing an undertaking in the usual terms within two weeks from today.